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Action

Public Hearing

Proposed Amendments to California Code of Regulations, Title 5, Sections 80300, 80309.1, 80310, 80311, 80314.5 and 80317, and the Addition of New Section 80305, Pertaining to the Committee of Credentials

Executive Summary: The Commission will consider the amendments to sections 80300, 80310, 80311, 80314.5 and 80317 and the addition of new section 80305 of Title 5, California Code of Regulations, at a public hearing scheduled for 10:00 a.m. on December 1, 2005 at the California Commission on Teacher Credentialing, 1900 Capitol Avenue, Sacramento, California. These sections pertain to the discipline of professional certificated personnel. The changes were noticed in Coded Correspondence 05-0016 mailed October 14, 2005. The written comment period closed at 5:00 p.m. on November 28, 2005.

Recommended Action: Staff recommends that the Commission adopt the proposed recommended changes.

Presenter: Mary C. Armstrong, Director
Kim Hunter, Staff Counsel
Division of Professional Practices

Strategic Plan Goal(s): 1

Promote educational excellence through the preparation and certification of professional educators.

- ◆ Evaluate and monitor the moral fitness of credential applicants and holders and take appropriate action.

Proposed Amendments to California Code of Regulations, Title 5, Sections 80300, 80309.1, 80310, 80311, 80314.5, and 80317, and the Addition of New Section 80305 Pertaining to the Committee of Credentials

Introduction

The proposed amendments to California Code of Regulations, Title 5, sections 80300, 80309.1, 80310, 80311, 80314.5 and 80317, and the addition of new section 80305, pertaining to the Committee of Credentials are being presented for public hearing. Included in this item are the background of the proposed regulations, a brief discussion of the proposed changes, and the financial impact. Also included are the responses to the notification of the public hearing and a copy of the notification distributed in Coded Correspondence 05-0016 dated October 14, 2005.

Background of the Proposed Regulations

Summary of Existing Laws and Regulations

Staff is proposing modifications to existing regulations, and new regulations, as a result of the enactment of legislation (SB 63 Chapter 73, Statutes of 2005). Additional changes make technical and clarifying corrections.

Cost savings measures mandated by SB 63 (Chapter 73, Statutes of 2005) are contained in Education Code section 44242.3 and amended Education Code section 44244.

New Law: Section 44242.3 mandates that first-time applicants subject to investigation by the Committee of Credentials have an opportunity to respond to the allegations in writing. The Committee is required to grant or recommend denial of an application based on the information obtained during the investigation and the applicant's response. This change in the Committee's procedure allows the first-time applicant one opportunity to provide a written explanation of alleged misconduct, with no right to appear personally before the Committee. Currently, an applicant has two opportunities to submit information to the Committee with a right to an appearance before the Committee. The Commission anticipates savings of approximately \$15,000 per year, and the streamlined process would result in more expeditious processing of applications. In addition, without the additional workload of appearances by first-time applicants, the Committee would be able to review more investigations of first-time applicants every month.

After negotiations with representatives of the California Teachers Association, and at their request, a separate and new section, 80305, was drafted in order to include more detailed information about the streamlined process for first-time applicants.

Section 44244 was amended to eliminate the current requirement that, after the Committee conducts an investigation, the notice of the Committee's recommended disciplinary action be sent via registered mail. The California Code of Civil Procedure, section 1013(a), codifies the sending of notices by regular mail, a practice that is followed by other state agencies, as well as by the federal government. This valid form of legal notification will result in savings to the Commission in postage and labor costs of approximately \$11,000 per year.

Technical Changes: The wording in section 80317 was revised to clarify how and when credential applicants and holders may request an administrative hearing. Language describing the administrative hearings, accusations and statements of issue was eliminated, as Government Code sections apply.

After negotiations with representatives of the California Teachers Association, and at their request, language contained in new section 80318 providing for a separate in-house review process for low-level discipline (public reprovals and private admonitions) was removed.

Proposed Changes

80300: Staff is proposing that a definition of first-time applicants be included.

80305: Staff is proposing a new section that outlines jurisdictional requirements and details timelines of the streamlined investigation process for first-time applicants.

80309.1: Staff is proposing that the title be revised to reflect that this section does not pertain to first-time applicants.

80310: Staff is proposing that the title be revised to reflect that this section does not pertain to first-time applicants, and that the language stating that registered mail will be used for notification purposes be deleted.

80311: Staff is proposing that the title be revised to reflect that this section does not pertain to first-time applicants.

80314.5: Staff is proposing that the title be revised to reflect that this section does not pertain to first-time applicants, and that the requirement that registered mail be used for notification purposes be deleted.

80317: Staff is proposing technical clarifications on how credential applicants and holders may request an administrative hearing. Staff is also proposing deleting language that is covered by the Government Code.

Financial Impact

California Commission on Teacher Credentialing: Cost savings of approximately \$26,000 annually are projected once the regulations are revised.

California Colleges and Universities: None

Private Persons: None

Mandated Cost: None

Notice of Proposed Rulemaking Mailing List and Responses

Mailing List:

- Members of the California Commission on Teacher Credentialing
- California County Superintendents of Schools
- Credential Analysts at the California County Superintendents of Schools Offices
- Superintendents of Selected California School Districts
- Deans and Directors at the California Institutions of Higher Education With Commission-Accredited Programs
- Credential Analysts at the California Institutions of Higher Education with Commission-Accredited Programs
- Presidents of Selected Professional Educational Associations

The notice was also placed on the internet at <http://www.ctc.ca.gov>.

As of Tuesday, November 8, 2005, the Commission has received two responses to the public announcement, both responses not in support.

Responses Representing Individuals Not in Support

1. The Honorable Fabian Nunez, Speaker of the Assembly and The Honorable Don Perata, President pro Tempore of the Senate *Comments (summarized)*: Speaker Nunez and President Perata requested that the Commission postpone the adoption of implementing regulations (for streamlining the process for first-time applicants and ceasing certified mailings) until early next year to give the Legislature an opportunity to revisit Senate Bill 63, which may have inadvertently made substantive policy changes related to new applicants. *Response*: SB 63 (Chapter 73 of 2005) was effective July 2005 as an urgency measure requiring immediate implementation.

2. Michael Rothschild, representing the California Teachers Association. *Comments (summarized)*: The regulations regarding streamlining of the first-time application process are in conflict with other provisions of the Education Code. Not allowing for an appearance will have a discriminatory effect on applicants of minority ethnicity, particularly from south central Los Angeles, who have one or more criminal arrests without resulting

convictions. The regulations erect a perceived discriminatory bar for those who have suffered numerous arrests solely due to their ethnicity, location of residence or other discriminatory factors when no criminal conviction has occurred. Applicants will be required to provide a written response explaining arrests when jurisdiction for a fitness review only occurs after a conviction. There is no mechanism by which a first-time applicant can explain a criminal conviction. Committee recommendations should not be sent by “snail” mail since Respondents may be on an extended sabbatical or brief summer vacation. Respondents should be allowed forty days to request an administrative hearing, instead of thirty days. Seventy days would be preferable given that teachers frequently take well-earned vacations during summer or holiday break.

Response: The proposed regulations are not in conflict with the Education Code. The regulations will not have a discriminatory effect on applicants of minority ethnicity, nor erect a perceived discriminatory bar, because applicants will not be formally reviewed if they have been arrested with no conviction, since jurisdiction for formal review does not exist. Applicants will not be required to provide a written response for arrests, and will have the opportunity to explain convictions in writing before the Committee of Credentials. All applicants will continue to have a right to an appearance at an administrative hearing should their application be denied and an appeal is filed. Respondents have been notified in writing at least twice prior to receiving the Committee recommendation, so Respondents can make arrangements to have their mail forwarded and/or redirected should they be on vacation or sabbatical. Education Code section 44244.1 specifies thirty days to request an administrative hearing.

Recommendations

Staff recommends that the Commission adopt the amendments to the California Code of Regulations, Title 5, sections 80300, 80310, 80311, 80314.5 and 80317 and the addition of new section 80305, pertaining to the Committee of Credentials.

**Proposed Amendments to the California Code of Regulations,
Title 5, Sections 80300, 80309.1, 80310, 80311, 80314.5, and 80317
and the Addition of 80305 Pertaining to the Committee of Credentials**

INITIAL PROPOSED REGULATIONS

80300	Definitions
<u>80305</u>	<u>First-Time Applicant Review</u>
80309.1	Initial Review <u>For Holders and Applicants Not Covered by Section 80305</u>
80310	Notice of Meeting, Formal Review <u>For Holders and Applicants Not Covered by Section 80305</u>
80311	Request for Appearance <u>For Holders and Applicants Not Covered by Section 80305</u>
80314.5	Notice of Committee Action <u>For Holders and Applicants Not Covered by Section 80305</u>
80317	Administrative Hearings

80300 DEFINITIONS

- (a) "Adverse action" is a denial, a private admonition, public reproof, suspension or a revocation of one or more credentials.
- (b) "Aggravating factor" is an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession. Aggravating factors may include, but are not limited to, the following:
- (1) a prior record of adverse action including the nature and extent of that record;
 - (2) that the misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct;
 - (3) that the misconduct was surrounded by or followed by bad faith, dishonesty or other violation of the laws governing educators;
 - (4) that the misconduct significantly harmed a child entrusted to the care of a credential holder or applicant, significantly harmed the public or the educational system;
 - (5) that the holder or applicant demonstrated indifference toward the consequence of the misconduct, which includes failure to comply with known court orders; or
 - (6) that the holder or applicant had prior notice, warnings or reprimands for similar conduct from any reliable source.
- (c) **(1) "Applicant" is an individual who is applying for a credential, permit, waiver or other certification document issued by the Commission on Teacher Credentialing.**

(2) "First-time Applicant" is an individual who is applying for a credential issued by the Commission who has never held a credential, or who has not held a credential issued by the Commission within four years from the date of submission of the application.

- (d) "Commission" is the Commission on Teacher Credentialing or a predecessor agency.
- (e) "Committee" is the Committee of Credentials.
- (f) "Confidential investigative report" is a summary of applicable law and relevant facts, as well as information regarding aggravating and mitigating factors, prepared and presented to the Committee pursuant to Education Code section 44242.5(c)(2).
- (g) "Credential" is any credential, certificate, life document, life diploma, permit, certificate of clearance, or waiver, or other document which authorizes the holder to perform services which require certification and was issued by the Commission.
- (h) "Complainant" is the person or persons filing a statement pursuant to Education Code section 44242.5(b)(2), or an employer filing a notice pursuant to Education Code section 44242.5(b)(3), or (4).
- (i) "Denial" is refusal to grant a credential to an applicant whose conduct comes within the provisions of Education Code sections 44345 or 44346.
- (j) "Employer" is the entity which contracts with or otherwise engages a holder or applicant for the performance of educational services.
- (k) "Formal review" is the meeting held pursuant to Education Code section 44244.
- (l) "Holder" is an individual possessing a credential, permit, waiver or other certification document issued by the Commission.
- (m) "Mitigating factor" is an event or circumstance which demonstrates that the public, schoolchildren and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action whatsoever. Mitigating factors may include, but are not limited to, the following factors:
 - (1) absence of any prior record of adverse action over many years of educational service, coupled with present misconduct which is not deemed most serious;
 - (2) lack of harm to the person who is the object of the misconduct;
 - (3) emotional or physical difficulties suffered by the holder or applicant which substantially contributed to the misconduct; provided that the difficulties were not the product of illegal conduct by the credential holder or applicant, such as illegal drug or substance abuse; and further provided that the credential holder or applicant has established through clear and convincing evidence that he or she no longer has such difficulties;

- (4) a demonstration of good character of the applicant or holder attested to by references from the educational community or the general community from individuals aware of the extent of the applicant's or holder's misconduct;
- (5) objective action taken by the applicant or holder, spontaneously demonstrating remorse at the time of the misconduct, and recognition of the wrongdoing which is designed to timely make amends for the consequences of the misconduct;
- (6) the proximity or remoteness in time relative to the seriousness of the misconduct; or
- (7) the nature and extent of subsequent rehabilitation.

(n) "Private admonition" is an adverse action defined and governed by Education Code section 44438.

(o) "Probable cause" is reasonable grounds for belief in the existence of facts warranting adverse action.

(p) "Public reproof" is a public warning from the Commission that conduct is not appropriate for a credential holder or applicant. Following a public reproof, commission of the same or similar misconduct may result in more serious adverse action. It is issued only when adequate to appropriately protect the public, schoolchildren and the profession.

(q) "Recurring conduct" is behavior involving the exercise of consistently poor judgment or misconduct.

(r) "Revocation" is the termination of an individual's ability to work in a position requiring certification. Once effective, the revocation continues unless the individual is reinstated by the Commission.

(s) "Sexual misconduct" is:

- (1) acts or conduct, directed at a minor which a reasonable person would believe to be motivated by sexual interest;
- (2) acts or conduct defined in Education Code section 44010 whether or not the applicant or holder was convicted or arrested; or
- (3) the proliferation or distribution of child pornography or the exploitation of any minor through the use of any pornography by a credential holder or applicant. "Pornography" consists of the acts defined in Part 1, Title 9, Chapters 7.5 and 7.6 of the Penal Code, commencing with section 311.

(t) "Suspension" is the temporary inactivation of a credential for a specified period of time. A suspension may be stayed on conditions of probation or may be an actual suspension or may be both. If an actual suspension, the credential holder may not work in a position requiring a credential during the period of actual suspension.

(1) A "stayed suspension" may be issued for a specified period of time only if the stay and performance of specified rehabilitative or probationary duties by the credential holder during the period of the stay is deemed consistent with the purposes of professional discipline.

(2) An "actual suspension" may be issued for a specified period of time. Actual suspensions imposed for one year or longer shall require presentation of sufficient proof to the Commission of the credential holder's rehabilitation, or present fitness to perform the duties authorized by the credential before the suspension may terminate.

Note: Authority cited: Sections 44225(q) and 44242.7(b), Education Code. Reference: Sections 44002, 44225(q), **44242.3**, 44242.5, 44242.7, 44421, 44244, and 44438, Education Code.

80305 FIRST-TIME APPLICANT REVIEW

- (1) **This section applies to first-time applicants. In addition, Education Code sections 44242.5(f)(1) and 44244.1(a)(1) and (2), and sections 80307, 80312, 80314, 80315, 80317, and 80320 apply to first-time applicants.**
- (2) **An investigation is commenced, after jurisdiction is established by the receipt of any of the items listed in Education Code section 44242.5(b)(1) through (6), on the date the first-time applicant is notified, in writing, that his or her fitness to hold a credential is under review. Notification of the investigation shall be sent by mail, and shall be provided to the first-time applicant, complainant, and current, or last-known, educational employer, and to the university or college which submitted a pending application for certificate of clearance.**
- (3) **The Committee shall review the application no later than six months after the commencement of the investigation. The Committee has jurisdiction to conduct a review upon receipt of any of the items listed in Education Code section 44242.5(d)(1) through (6).**
- (4) **Notwithstanding subsection (3), the chairperson of the Committee may grant an extension of time, not exceeding six months, when additional time is necessary to complete the investigation.**
- (5) **At the review, the Committee shall consider a written summary of the alleged misconduct and any response submitted by the first-time applicant. The summary shall not contain any information that reveals the identity of persons other than the person who is the subject of the investigation. If the Committee determines that probable cause for denial does not exist, the Committee shall terminate the investigation and grant the application. Upon completion of the review, the Committee shall report its actions and recommendations as to**

probable cause for denial to the Commission.

- (6) A written copy of the summary and recommendation of the Committee, together with a notice of appeal rights available, shall be sent by mail to the first-time applicant's last known address within 14 calendar days after the meeting at which the recommendation is made. A copy of the recommendation, but not the summary, shall be mailed to all complainants and parties requesting notice of the Committee's recommendation. The written summary shall be available, upon its request, to the employing or last known employing school district, or, where denial is recommended by the Committee and a request is made within one year from the date the Committee makes a recommendation, to a school district providing verification that the first-time applicant has applied for employment in the district. Such recommendation, but not the summary, shall also be made available to members of the public upon request.

Note: Authority cited: Sections 44225(q), Education Code. Reference: Sections 44242.3, 44242.5, 44242.7, 44244, and 44244.1.

80309.1 INITIAL REVIEW FOR HOLDERS AND APPLICANTS NOT COVERED BY SECTION 80305

(a) Except as provided in section 44242.3 of the Education Code, ~~P~~prior to issuance of a notice of meeting pursuant to section 80310 the Committee shall conduct an initial review of the matter based upon written information.

(b) Notification of the initial review shall be provided to the holder or applicant only.

(c) When the matter is set for initial review by the Committee the staff shall provide written notification to the applicant or holder and offer the applicant or holder a reasonable opportunity to provide written information to the Committee

prior to the Committee meeting. All written statements by the applicant or holder provided to the Committee shall be verified under penalty of perjury.

(d) Staff shall submit a confidential investigative report to the Committee.

Authority cited: section 44225(q), Education Code. Reference: Section 44242.3 and 44242.5, Education Code.

80310 NOTICE OF MEETING, FORMAL REVIEW FOR HOLDERS AND APPLICANTS NOT COVERED BY SECTION 80305

(a) **Except as provided in section 44242.3 of the Education Code, T**he notice of meeting required by Education Code section 44244(a), for the meeting also known as formal review, shall be sent to the holder or applicant by **certified** mail, ~~return receipt requested~~. The notice shall be sent to the address of record and/or the last known address of the holder or applicant. The notice to the holder or applicant shall contain a confidential investigative report.

(b) The notice shall be sent to any complainant and known employer, or last known employer and to the university or college which submitted a pending application for certificate of clearance.

Authority cited: Section 44225(q), Education Code. Reference: Section **44242.3 and** 44244(~~a~~), Education Code; and Section 1013(a) Code of Civil Procedure.

80311 REQUEST FOR APPEARANCE FOR HOLDERS AND APPLICANTS NOT COVERED BY SECTION 80305

(a) **Except as provided in section 44242.3 of the Education Code, N**o later than 20 **calendar** days prior to formal review before the Committee pursuant to section 80310, the holder or applicant may request an opportunity to personally appear before the Committee during the formal review to respond, under oath, to questions from the Committee.

(b) Upon receipt of a request for an appearance, staff shall schedule a specific day and time to appear before the Committee during the formal review. Staff shall also notify all complainants and the last known employer, of the scheduled appearance. This notice shall state that the complainant and/or employer may also appear to offer relevant testimony before the Committee.

(c) If the holder or applicant is unable to appear before the Committee at the scheduled time, the Committee shall conduct the meeting, as noticed pursuant to section 80310, without an appearance. The Committee may grant a continuance if an emergency situation exists.

Authority cited: Section 44225(q), Education Code. Reference: Section **44242.3 and** 44244, Education Code.

80314.5 NOTICE OF COMMITTEE ACTION FOR HOLDERS AND APPLICANTS NOT COVERED BY SECTION 80305

A written copy of the recommendation and findings of the Committee together with a notice of appeal rights available shall be sent by **registered** mail to the holder's or applicant's last known address within 14 **calendar** days after the meeting or hearing at which the recommendation is made. Unless the recommendation involves private admonition, as provided in Section 44438 of the Education Code, a copy of the said recommendation, but not the findings, unless otherwise

provided by law, shall be mailed to all complainants and parties requesting notice of the Committee's decision in the case. Such recommendation, but not the findings, unless otherwise provided by law, shall also be made available to members of the public upon request.

Authority cited: Section 44225(q), Education Code. Reference: Sections 44244 and 44438, Education Code.

80317 ADMINISTRATIVE HEARINGS

(a) The credential holder or applicant may, ~~within thirty (30) days after personal service or the mailing of notice of the Committee's recommendation,~~ request an administrative hearing ~~by giving written notice~~ to ~~contest~~ the ~~Committee's recommendation for adverse action.~~ Such request shall be in writing and shall be received by the Commission no later than 30 calendar days after the date of the mailing of the notice of the Committee's recommendation. The administrative hearing is a trial de novo. Any prayer contained in an Accusation or Statement of Issues shall request "appropriate adverse action according to evidence."

Note: Authority cited: Section 44225(q), Education Code. Reference: Sections 44244(d), ~~and~~ 44244.1, ~~and~~ **44246**, Education Code.